

April 30 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0601

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Phyllis Jamison  
Pro Se Appellant  
P.O. Box 343  
Clinton, MT 59825  
Phone & Fax (406) 825-2004

PHYLLIS JAMISON,

Plaintiff and Appellant,

v.

APPELLANT'S

OPENING BRIEF

FRED VAN VALKENBURG,  
MISSOULA COUNTY COMMISSION,  
BILL CAREY, COMMISSIONER, JEAN  
CURTISS, COMMISSIONER, JAMES  
MCCUBBIN, DEPUTY COUNTY  
ATTORNEY, DENA L. LUND, JACK S.  
LUND, RICHARD B. WHEATLEY,  
TAMBRY T. WHEATLEY,

Defendants and Appellees.

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On Appeal from the District Court of the  
Fourth Judicial District of the State of Montana,  
In and For the County of Missoula

## Appearances:

Alan F. McCormick  
Garlington, Lohn & Robinson, PLLP  
199 West Pine, P.O. Box 7909  
Missoula, MT 59807-7909  
Telephone (406) 523-2500  
Telefax (406) 523-2595  
afmccormick@garlington.com

Attorney for Appellees  
Fred Van Valkenburg  
& Missoula County

Paul Sharkey  
Phillips Law Firm, P.C.  
283 West Front, Suite 301  
P.O. Box 8569  
Missoula, MT 59807-8569  
Phone (406) 721-7880  
Fax (406) 721-0058

[phillips@phillipsmontana.com](mailto:phillips@phillipsmontana.com)  
<http://www.phillipsmontana.com/>  
Attorney for Appellees  
Jack Lund and Dena Lund

## I. ISSUES PRESENTED

**ISSUE 1:** Whether the District Court overlooked significant facts and erred in denying Appellant Phyllis Jamison all pedestrian and all vehicular access to the sixty-foot wide county road she lives on, including denying all emergency and service vehicle access, as well as denying Jamison's only fire escape route out and denying the only fire suppression access to her property.

**ISSUE 2:** Whether Missoula County drafted a contract excluding Appellant Jamison from all prior negotiations, lasting months, that Missoula County did engage in with other neighbors who signed the contract, while Missoula County also coerced me into signing on the same day and time that Missoula Deputy County Attorney James McCubbin hand-drafted the contract on a fence post, refusing to give Jamison even one hour or one day to think it over, while the other neighbors had months to think it over and talk to their lawyer, and McCubbin refused to give me a copy of the signed contract until five days later. Jamison never did receive a certified copy or a copy with original signatures.

**ISSUE 3:** Whether the District Court's September 9, 2009 Judgment encourages the decades-long culture of Missoula County's negligence in allowing significant encroachments, county-wide, onto its rights of way, per acknowledgments by Missoula County Assistant Director of Public Works, Charles Wright, in several "Missoulian" newspaper articles, including the October 12, 2008 "Missoulian" Section A5, attached as Exhibit 3, from Jamison's Motion to Lodge, Docket No. 21, which was deemed denied by the District Court.

**ISSUE 4:** Jamison was the only resident in Missoula County in 2001 that had her snow plow service terminated, immediately following her speaking during the County Commissioners public comment period, asking the county to not refuse entrance for any stray cat into the shelter. Then County Commissioner Barbara Evans called me a cat killer in front of a packed meeting room and said there were no tax dollars to accept all stray cats into the Missoula City-County Animal Control Shelter. Evans admonished me for using the word "euthanasia" -- and incited hatred against me by telling me in front of the packed audience "That is a nice word for not a nice thing." She ordered me to call it what it is: "Killing." Both Commissioner Jean Curtiss and Commissioner Evans stated there are "no tax dollars" to pay for euthanasia.

Long time advisor and paid provider to the county shelter, Veterinarian Sara Stephens also called me a "cat killer" -- saying that should be my "title" in a 8-23-01 letter to the "Missoularian". She called me "deadly" and that I have "killed many cats in my "crusade". Stephens further called me -- in the "Missoularian" -- "Auschwitzian, lazy, simplistic and deadly" and she said I should be "exposed", Exhibit 42, Motion to Lodge, Docket No.22, deemed denied by the District Court. I responded to Stephens, rising above her egregious behavior, Exhibit 43, Motion to Lodge, Docket No. 22, deemed denied by the District Court. Yet, in a later article in the "Missoularian" Missoula County employee Stephens called me "vindictive" and "obsessed" and numerous other hate-inciting comments that I cannot write here because I am crying so hard I can't see. That's why this issue is so long -- because I can't type this stuff again, it's too painful. Missoula County's behavior had the intended effect and shut me up. I don't ever speak or write publically anymore to help the stray cats because my reputation has been permanently ruined by Missoula County and I am in emotional

pain and I never know how Missoula County will harm me next. Supervisor of the Missoula City-County Shelter, Ed Franciscina joined Stephens in her malicious tirade of me, with vicious statements about me -- because he was tired of my putting pressure on Animal Control to stop refusing entry of stray cats. The Supervisor falsely told the "Missoulilian" that he "never turned away one cat." Yet, Exhibits 47 and 48 prove that he did knowingly and intentionally misrepresent the facts to the Missoulilian in his attempt to defame me. Because the Supervisor refused to take in the cats, KECI TV reported on the 10-3-07 transcript of their broadcast, attached as Exhibits 47 and 48 that "many of the neighborhood dogs died" from poisoning put out for the cats. Thus, many additional animals died because the Supervisor refused to perform his duty. That newscast started off with, "Missoula County's Feral Cat population is exploding. And the problem is a lot more common than you'd think. . ." Exhibits 47 and 48 attached, Motion to Lodge, Docket No.22, deemed denied by the District Court.

Most businesses do not want their name associated with Missoula's out-of-control feral cat problem, but Rangitsch Brothers RV Center and Modile Homes wrote a 8-7-00 letter for me that I read to the Missoula City Council and to the Missoula County Commissioners, Exhibit 19, Motion to Lodge, Docket No. 22, deemed denied by the District Court. That letter from their then Service Manager Tim Green, stated in part: "We often seem to become a dumping station for stray cats. We try to trap them but often no traps are available. I can tell you it's no fun when we find decomposing cats with their kittens in older homes or in the bellies of these homes. The are usually found while looking for a bad odor. They have been trapped in the home or have found it as a shelter and have starved or froze to death and most likely been filled with disease. Please lets start taking this issue a llittle more seriously. In the past when we've

called concerning a dog tha's loose on the property, someone is here right away to deal with the situation. When we've call[ed] about the cat population we get little positive response from anyone but the Humane Society. And their traps are being used elsewhere. Not enough to go around. Sincerely, Tim Green, Rangitsch Brothers, Mobile Home Service Dept." Exhibit 19.

#### IV. STANDARD OF REVIEW

I believe the standard of review for all four issues is a *de novo* review.

#### V. ARGUMENTS WITH SUPPORTING AUTHORITY

A. The District Court overlooked significant facts and erred in its 7-6-09 "Opinion and Order of Dismissal", Docket No. 23, attached. The entire order should be overturned, except for adding Tambry T. and Richard B. Wheatley to the case caption.

Page 1 of the 7-6-09 Order erroneously states that the Missoula County Commissioners "decided to abandon" a public right of way "on Woodville Avenue in Clinton, Montana." The record will never show that the Missoula County Commissioners ever made any such decision. Rather, none of the parties refuted or provided any contradictory evidence whatsoever to Jamison's statement on P.3 of her 1-20-09 "Plaintiff's Amended Complaint", Docket No.18 that: ". . .the Board of Missoula County Commissioners has not yet voted on whether or not to approve the proposed abandonment."

And, Jack Lund and Dena Lund, in their 5-8-09 "Motion to Dismiss", P.12 repeatedly use the future tense in referring to "the portion *which is to be abandoned*."

Also incorrect is the District Court's 7-6-09 Opinion starting at the bottom of P.1 that states the County had "legal authority to do [the abandonment] despite Plaintiff's objections." Actually, Missoula County acknowledged they had no authority and were in fact negligent and erred in issuing a septic permit to the Lunds which allowed the Lunds to illegally place their new septic entirely in the middle of the Woodville Avenue right of way. The County had not done their due diligence and in acknowledgment of their negligence, the County offered to pay the Lunds "up to the expense of installation of their current septic system if the County requires relocation of the septic system [if the Lunds do not meet the conditions of the 4-13-07 pre-agreement to the proposed abandonment]" Exhibit 2, P.3 attached.

Thus, all of the other conclusions the District Court reached regarding the so-called completed abandonment are entirely erroneous and should be overturned.

Argument for Issue 2:

The evidence in the record shows that the 4-13-07 [Missoula County]-Lund-Jamison-Wheatley Agreement" is a contract of adhesion. This Court has stated: "An adhesion contract is [a] usu[ally] standard-form contract prepared by one party, to be signed by the party in a weaker position, usu. a consumer, who adheres to the contract with little choice about the terms. *Black's Law Dictionary* at 342; see also *Kloss v. Edward D. Jones & Co.*, 2002 MT 129, ¶24, 310 Mont.123,54P.3d 1 ("A contract of adhesion is a contract whose terms are dictated by one contracting party to another who has no voice in its formulation." (citing Arthur L. Corbin, *Corbin on Contracts* vol. 1, §1.4,13 (Joseph M. Perillo ed., rev. ed., West 1993))). Although one who executes a written contract is generally "presumed to know the contents

of the contract and to assent to those specified terms," *Quinn v. Briggs*, 172 Mont. 468, 476, 565P.2d 297, 301 (1977), the law pertaining to contracts of adhesion "recognizes that in certain circumstances, traditional assumptions associated with contract law are unfounded," *Kloss*, ¶24. Contracts do not always reflect terms that were bargained for at arms length; instead, terms are sometimes dictated by one party to another who has no bargaining power and no realistic options. Thus, we have recognized that contract of adhesion arise when a standardized form of agreement, usually drafted by the party having superior bargaining power, is presented to a party whose choice is either to accept or to reject the contract without the opportunity to negotiate its terms. *Klos*, ¶24. *Woodruff v. Bretz, Inc.*, 12-4-07.

The District Court did not analyze and none of the parties ever refuted or ever submitted contradictory evidence of Jamison's assertion in her 1-20-09 "Plaintiff's Amended Complaint", p.10 that Jamison's constitutional and other rights were violated by secret and closed meetings such as the 9-27-07 Site Viewing Meeting where Jamison was the only member of the public excluded from the public meeting by the Lund's breaching and encroaching fences. All other members of the public and county officials such as County Attorney James McCubbin, Assistant Director of Public Works Charles Wright and then County Commissioner Larry Anderson.

The District Court did not analyze and none of the parties ever refuted or ever submitted contradictory evidence of Jamison's assertion that Deputy County Attorney James McCubbin was in constant communication with all the other parties to the agreement, in the months preceeding the signing, but McCubbin refused to answer all of Jamison's phone calls before, during and after the signing. Lund's acknowledge they "kept constant contact with Mr. McCubbin and Mr. Wright" P.7 and Exhibits E and R of Jamison's 1-2-09

Amended Complaint.

Likewise, the District Court did not analyze and none of the parties ever refuted or ever submitted contradictory evidence of Jamison's assertion that Deputy County Attorney James McCubbin hand drafted the contract on a fence post and did not give Jamison one hour or one day or one week to think it over, while all the other parties had been discussing it for months -- as their phone and e-mail records will show. They all stood around in a circle around Jamison while she was trying to read the contract between their impatient gestures of coughing, clearing their throats and shuffling their feet. Also, they had an opportunity to talk with their lawyers, which Jamison did not.

Thus, when considered in its context, the 4-13-07 agreement is unconscionable and was not within Jamison's reasonable expectations.

Likewise, the District Court did not analyze and neither party refuted or provided contradictory evidence to any of Jamison's numerous other assertions, except that the Lunds wrote Jamison a letter, which they copied to all the other parties, including Missoula County officials, ordering Jamison to stay out of the tree removal process and ordering Jamison to not contact them "in any way", Exhibit 18, Motion to Lodge, deemed denied by the District Court. Lunds also left a phone message for Jamison which she has saved and is offering to play for the Court, ordering Jamison to stay away from the Lunds and off the Woodville Avenue public right of way. Exhibit 18 also shows the Lunds also refused any written communication from Jamison.

Exhibits 5, 6, 7 show the Lunds did not take the "narrow strip" of Woodville Ave. they claim they did in the



Motion to Dismiss, but rather dug up as much of the right of way as they wanted. They thus filed a false septic permit application and then did not follow the terms of the permit. Lunds also filed a false encroachment report against me and defamed me with malicious malicious comments in their Motion to Dismiss, -- all of which are contradicted by the Lunds letter and phone message to me.

#### **VI. CONCLUSION STATING PRECISE RELIEF SOUGHT**

Please see my 1-2-09 Amended Complaint for my relief sought. I cannot write much more because I started losing weight again after I wrote Issue 4 and I have been crying every time I sit at my desk to type.

In addition to the relief specified in the above complaint, I am asking the Court to order sanctions against both parties for humiliating me and defaming me and violating my rights -- in any manner of sanction that the Court may deem just and proper.

I am also asking the Court to order Missoula County to post an encroachment notice against the Wheatley's fence that is denying my minimum 20-feet of fire suppression access to my property.

I am also asking that all the District Court's orders and the District Court's 7-6-09 Opinion and Order be overturned except for adding the Wheatleys to the caption.

I am asking this Court to allow my Motion to Lodge, that was deemed denied by the District Court, to be considered for consideration, which has my discrimination issues and the fact that Missoula County never advised me or posted signs telling my constitutional rights when they made the adverse decision to terminate my snow plow service in

2001.

I am asking that the entire 4-13-07 Agreement be overturned as being unconscionable and not within my reasonable expectations. And that instead all of the Relief sought in my 1-20-09 Amended Complaint be granted.

I am asking that all of the remaining trees, sheds and fences be removed from the Woodville Avenue right of way between my property on the dead end side of Woodville Ave and Third Street, one block away from Jamison's property.

Respectfully submitted,

Phyllis Jamison

Phyllis Jamison

Pro Se Appellant

April 30, 2010

#### **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11(4)(b); of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a mono-spaced Courier text typeface of 12 points; is double spaced; [I do not have Microsoft Word 2003 on my computer-typewriter], is not more that 30 (14 for reply) pages, excluding certificate of service and certificate of compliance.

Dated this 30th day of April, 2010.

Phyllis Jamison

Phyllis Jamison, Pro Se Appellant

#### **CERTIFICATE OF SERVICE**

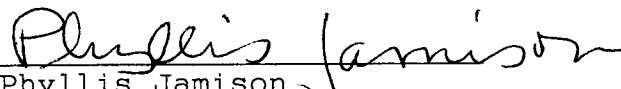
I, the undersigned pro se appellant, hereby certify

that on this 30th day of April, 2010 I filed a true and accurate copy of the foregoing Pro Se Appellant's Opening Brief with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing motion upon each attorney of record in the above referenced action, by depositing the same in the United States Mail, postage prepaid thereon, addressed as follows:

Paul Sharkey  
Phillips Law Firm, P.C.  
P.O. Box 8569  
Missoula, MT 59807-8569  
Counsel for Dena Lund & Jack Lund

Alan F. McCormick  
Garlington, Lohn & Robinson  
P.O. Box 7909  
Missoula, MT 59807-7909  
Counsel for Missoula County

Dated this 30th day of April, 2010.

  
Phyllis Jamison  
P.O. Box 343  
Clinton, MT 59825  
Pro Se Appellant